UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,755	12/30/2003	Richard J. Schultz	SSIC 2 00002	9092

27885 7590 10/27/2005

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP
1100 SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44114

EXAMINER	
SPISICH, MARK	
ART UNIT	**PAPER NUMBER**
1744	

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/749,755	SCHULTZ, RICHARD J.	
	Examiner	Art Unit	
	Mark Spisich	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art (the introductory phrase of the "Jepson" claim) in view of Brochure of Brightline Nylon-AB. The introductory clause of claims 1 and 5 each recite a twisted (stainless steel) wire brush including a plurality of bristles and fails only to discloses the recited "improvement", the bristles being antibacterial. The Brightline brochure discloses a particular known nylon filament which contains a Silver-Zinc-Glass based antimicrobial (see the INTRODUCTION) which is described as having ideal properties "**for any cleaning brush**" (emphasis added) (see the last line of the INTRODUCTION). It would have been obvious to one of ordinary skill to have modified the brush of the admitted prior art with the "Brightline" bristles to prevent the growth of bacteria.

Response to Amendment

3. The declaration under 37 CFR 1.132 filed 10 August 2005 is insufficient to overcome the rejection of claims 1-8 based upon commercial success and long-felt unmet need as set forth in the last Office action because: (1) with regard to long-felt need, the body of knowledge in the art (of brushes) as it pertains to the inclusion of antimicrobial/antibacterial agents into plast6ic brush filaments is not old enough to

support such an argument. It is not as if the use of such filaments has been known for 50 years (in a specific environment other than that in the present application) and that no one in the art has ever thought of producing the claimed device or solving the problem addressed by applicant; and (2) with regard to the assertion of commercial success, the evidence presented in the declaration in support of this assertion is insufficient to overcome the rejection in that the sales, although attributed to the inclusion of the antibacterial, is not proved to be directly derived from the invention claims. Conclusory statements or opinions that increased sales were due to the merits of the invention are entitled to little weight. In re Noznick, 478 F.2d 1260, 178 USPQ 43 (CCPA 1973). Inventor's opinion as to the purchaser's reason for buying the product is insufficient to demonstrate a nexus between the sales and the claimed invention. Merely showing that there was a commercial success of an article which embodied the invention is not sufficient. Ex parte Remark, 15 USPQ2d 1498, 1502-02 (Bd. Pat. App. & Inter. 1990).

Response to Arguments

4. Applicant's arguments filed 10 August 2005 have been fully considered but they are not persuasive. In addition to the evidence of secondary considerations (which was addressed above), applicant asserts that there is no motivation to combine the teachings of the prior art. As for the state of the art of brushes and the inclusion of an antimicrobial/antibacterial, one of ordinary skill is aware of numerous documents which show that it is known in the art of brushware to include such materials in the plastic filaments of brushes for the purpose of preventing the growth of mold and bacteria. The

use of such filaments is also known or suggested to be used in brushes ranging from hairbrushes to toothbrushes to other general purpose brushes. The problem to be solved by the use of such filaments in any given brush is essentially the same irregardless of the particular type of brush. Whether or not the statement in the brochure is "puffery", there is nonetheless a statement or at least a suggestion that the particular filament may be used in any cleaning brush. Although there may be other preferred uses of the filament, there is still a suggestion that it may be used in environments other than the preferred one(s). In addition, the benefit derived from the use of the noted filament is essentially the same no matter what environment it is used in (to prevent growth of bacteria, mold, etc).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Spisich
Primary Examiner
Art Unit 1744

MS